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उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

CRIMINAL APPEAL NO.784/2004

APPELLANT (In Jail) — Dinesh, S/o Doman Lodhi, aged 24 years, R/o Village Tendua, P.S. Nanghat, District Durg (C.G.).

Vs

RESPONDENT — The State of Chhattisgarh, Through P.S-Nanghat, District Durg (C.G.)

Present:
Mr. Goutam Khetrapal, Advocate for the appellant.
Mrs. Madhunisha Singh, Panel Lawyer for the respondent-State.

ORAL JUDGMENT
(4th October, 2007)

Per Dhirendra Mishra, J:

This criminal appeal is directed against the judgment of conviction and order of sentence dated 27th August, 2004 passed by learned Additional Sessions Judge, Bemetara, Durg in Sessions Trial No.267/03 whereby learned Additional Sessions Judge has convicted the appellant under Section 376 (1) of the IPC and sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.3,000/-, in default of payment of fine additional R.I. for 6 months.

The trial court has convicted the appellant even after recording a finding that the prosecutrix was consenting party only on the ground that her age was less than 16 years on the date of incident.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the appellant submits that for the purpose of assessing the age of prosecutrix heavy reliance has been placed by the trial court on the entries in the school register, which has been proved by Chetram (PW-9), a teacher who has proved the document of Ex.P-10. Referring to the statement of Chetram (PW-9) it was vehemently argued that the document in fact is a concocted document and was prepared for adducing fabricated and false evidence regarding the date of birth of the prosecutrix. It was also argued that Dr. (Smt.) Vrinda Mandge (PW-13), who has examined the prosecutrix, has stated that she had assessed the age of prosecutrix as approximately 14 years, however, for confirmation of her age she had advised for ossification test. However, the prosecutrix was not subjected to ossification test, as admitted by the Investigating Officer Shri D.S. Dehari (PW-12), who has stated in Para 14 that the facility of X-ray is available in the District Hospital where the prosecutrix was medically examined, even then she was not subjected to ossification test.

On the other hand, learned counsel for the State has supported the impugned judgment.

[पीछे देखें]

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

I have heard learned counsel for the parties. I have perused the impugned judgment as also the oral and documentary evidence available on record.

So far as the submission of learned counsel for the appellant that the conviction of the appellant is based on the finding that the prosecutrix was less than 16 years of age on the date of incident is concerned, the above finding is based upon the statement of Shivkumar (PW-2), father of the prosecutrix, who has stated that the age of her daughter on the date of his examination is 13-14 years. In the cross-examination by the defence he has stated that she was born in the year 1990 in the month of *Poos*. He has further stated that he himself got the prosecutrix admitted in the school after six years of her birth, however, he does not recollect as to in which year she was admitted in the school. Whereas, PW-9 Chetram, who is the Headmaster in the Government Primary School, Tendua has proved the documents of Ex.P-10 & P-11 being the certificate and copy of admission register wherein the date of birth of the prosecutrix is shown as 1.2.1990. The above documents have been proved by this witness on the basis of original admission register produced during trial wherein the name of the prosecutrix is entered at Sr. No.771, her date of birth is shown as 1.2.1990 and her date of admission is

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

shown as 3.7.1996. From perusal of the entry in the register it is evident that this is a public document maintained by the government school in its usual course and there is no interpolation present in this regard to suggest any fabrication.

So far as the absence of the signature of the person concerned making entries is concerned, from perusal of the register it is observed that there is no column to the effect that the entries are to be signed by the headmaster at the time of admission. Thus, in the light of the statement of father of the prosecutrix, who is the best person to give evidence about the date of birth of her daughter and that his statement is duly corroborated by the documents of Ex.P-10 & P-11 being the admission register and certificate issued by school where the prosecutrix ~~persuaded~~ pursued her studies, the finding of the trial court that at the time of incident the prosecutrix was less than 16 years of age cannot be faulted.

At this stage learned counsel for the appellant submits that the appellant has been sentenced to undergo R.I. for 10 years and to pay a fine of Rs.3,000/-, in default to undergo additional R.I. for 6 months, however, looking to the age of the appellant and in the facts and circumstances of the case that the prosecutrix was the consenting

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party, the jail sentence imposed upon the appellant may be suitably reduced.

In the result, the appeal is partly allowed. Conviction of the appellant under Section 376 (1) of the IPC is maintained, however, the substantive sentence imposed upon the appellant is hereby modified and he is directed to undergo R.I. for 7 years in place of R.I. for 10 years.

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-

[पीछे के भाग]